committed independently by one of their number in the course of the execution of the common design, but not in furtherance thereof. *Powers* v. *Commonwealth*, 110 Ky. 386, 61 S. W. 735, 53 L. R. A. 245. And it would seem that this is the case even though the purpose of the conspiracy be to commit a crime made a felony by statute. See *Powers* v. *Commonwealth, supra.* Nor is each of several conspirators liable for a homicide committed by one of them, when pursued, where each is making an individual attempt to escape. See *Rex* v. *White*, Russ. & R. C. C. 99.

BANKRUPTCY—LIFE INSURANCE—REDEMPTION OF POLICY.—The plaintiff and other creditors filed an involuntary petition in bankruptcy against B., and later B. died. Subsequently B.'s estate was adjudicated bankrupt, and a trustee was appointed. The plaintiff promptly made proof of his claim against the estate, and it was allowed. The bankruptcy court, upon the application of the plaintiff, ordered that his claim be expunged from the list of claims, and this was done accordingly. Still later a dividend was declared and paid, in which dividend the plaintiff did not participate. At the time of his death, B. owned two life insurance policies, the proceeds of which, less their cash surrender value, which had been paid to the trustee, were paid to the defendant, the executrix of the estate. No order for the discharge of the bankrupt was applied for or granted. The plaintiff brought an action to subject the proceeds of the policies to the payment of his debt, claiming that § 70a (5) of the Bankruptcy Act conferred this right. *Held*, the plaintiff may recover. *Andrews* v. *Nix*, 246 U. S. 273. See NOTES, p. 43.

CHATTEL MORTGAGES—TITLE—LIEN—INCREASE OF DOMESTIC ANIMALS.—A. executed a mortgage to B. on certain domestic animals to secure a debt, but no provision was made to cover any increase. Prior to foreclosure there was an increase in the flock, and B. levied on it. Subsequently, the claimant, with knowledge of the levy, purchased the offspring. B. then instituted an action to foreclose the mortgage. *Held*, the mortgage did not cover the increase, and the claimant is entitled thereto. *Dixon* v. *Pierce* (Ga.), 95 S. E. 995.

For purposes of clearness we may divide the cases on this subject into two classes: (1) those adopting the common-law view; and (2) those governed by certain statutes in the so-called Code States, or the Code State view.

According to the common-law doctrine, the mortgagor transfers legal title to the mortgagee and retains only an equity of redemption in the chattel. *Cahoon* v. *Miers*, 67 Md. 573, 11 Atl. 278. Applying the rule, *partus sequitur ventrem* ("the brood belongs to the owner of the dam"), the mortgagee thereby becomes owner of the increase. *Hughes* v. *Graves*, 1 Litt. (Ky.) 317; *Dinton* v. *Kimball*, 114 Me. 270, 95 Atl. 1038. And as between mortgagor and mortgagee this title in the increase, having once vested, does not divest upon the expiration of the period of suitable nurture, but continues until the debt is paid or the mortgage foreclosed. As such nurture does not create the lien, its termination cannot take it away as against the mortgagor. *Funk* v. *Paul*,

64 Wis. 35, 24 N. W. 419, 54 Am. Rep. 576. However, the mortgagee's rights to the increase may be defeated by the intervention, after the period of suitable nurture, of a *bona fide* purchaser for value. For, as the mortgagor is in possession, and there is nothing upon the records to indicate that a mortgage exists upon the increase, he has the right to infer that it is unincumbered. *Enright* v. *Dodge*, 64 Vt. 502, 24 Atl. 768; *Darling* v. *Wilson*, 60 N. H. 59, 49 Am. Rep. 305. But if the purchase be made while the foal is running with the dam, the purchaser is put on notice, and hence cannot be a *bona fide* purchaser. See *Funk* v. *Paul, supra;* and *Darling* v. *Wilson, supra.* And if the purchaser knows that he is buying the offspring of a mortgaged animal, he is deemed to have bought with notice, and this is true regardless of the age and development of such offspring. *McCarver* v. *Griffin*, 194 Ala. 634, 69 South. 920. *A fortiori*, notice is presumed when the mortgage expressly covers the increase. *Edmonston* v. *Wilson*, 49 Mo. App. 491. By the weight of authority, the mortgage, at common law, not only covers the progeny in gestation on the date of the execution of the mortgage and born prior to the foreclosure, but also that which is conceived subsequent to the execution thereof and born prior to the foreclosure. *Ellis* v. *Reaves*, 94 Tenn. 210, 28 S. W. 1089.

We next come to the other line of decisions based on statutes which have been enacted in many States, chiefly in the Code States, providing that a mortgage does not transfer title but creates a mere lien on the property covered therein. This is known as the Lien Theory of the mortgage. Even here the courts are divided. The prevailing view, and the one on reason and principle, is that no lien is created on the increase in favor of the mortgagee. Since the mortgagor retains legal title to the dam, the maxim, *partus sequitur ventrem*, is again applicable; and he may dispose of such increase as he desires. *Demers* v. *Graham*, 36 Mont. 402, 93 Pac. 268, 13 Ann. Cas. 97, 14 L. R. A. (N. S.) 431; *First National Bank* v. *Erreca*, 116 Cal. 81, 47 Pac. 926, 58 Am. St. Rep. 133. These courts seem to have drawn no distinction between the case where the progeny was in gestation at the date of the execution of the mortgage, and the case where it was conceived subsequent to the execution thereof. Clearly there is no lien on the progeny in the latter case. *Thorpe* v. *Cowles*, 55 Iowa 408, 7 N. W. 677; *Shoobert* v. *De Motta*, 112 Cal. 215, 44 Pac. 487, 53 Am. St. Rep. 207. And the same rule generally prevails even though the increase be expressly mentioned in the mortgage. *Battle Creek Valley Bank* v. *First Nat. Bank*, 62 Neb. 825, 88 N. W. 145, 56 L. R. A. 124. See *Holt* v. *Lucas*, 77 Kan. 710, 96 Pac. 30.

However, it nas been held that a lien is created on the increase in spite of such a statute, on the ground that the mortgage covers not only the thing described, but also all that arises or proceeds from it. *First National Bank* v. *Western Mortgage Co.*, 86 Tex. 636, 26 S. W. 488.

The common law doctrine prevails in Virginia. Where a trustee sold the increase of animals held under a deed of trust, the court held that the trustee was entitled to the increase and that an execution creditor of the original grantor under the deed of trust, having no higher rights than his debtor, was not entitled to the increase, or to the amount re-

alized from the sale thereof. *Gannaway* v. *Tate*, 98 Va. 789, 37 S. E. 768. In regard to the status of the Lien Theory in Virginia, as applied to real estate mortgages, see discussion in 5 VA. LAW REV. 205.

CONSTITUTIONAL LAW—EX POST FACTO LAWS—STATUTE PROHIBITING POSSESSION OF INTOXICATING LIQUORS.—The defendant was convicted for the breach of a State statute making it a crime to have in one's possession more than a specified amount of spirituous liquors. He defended on the ground that the liquor so possessed had been acquired after the approval of the law but before, by its terms, it became effective, and that the law could not, therefore, apply to such liquor. *Held*, the conviction was constitutional. *Barbour* v. *Georgia*, 39 Sup. Ct. 316.

Slightly earlier decisions, out of regard for the privileges of the individual, restricted the power of the State in dealing with the possession and handling of intoxicating liquors. Spirituous liquors are "property" within the meaning of the Fourteenth Amendment to the Federal Constitution. *State* v. *Williams*, 146 N. C. 618, 61 S. E. 61, 17 L. R. A. (N. S.) 299. See *Sullivan* v. *Oneida*, 61 Ill. 242; and *Ex parte Brown*, 38 Tex. Cr. App. 295, 42 S. W. 554. In a later case, a municipal ordinance prohibiting the keeping, in certain places, of intoxicating liquors, for any purpose whatever, lawful or unlawful under the State prohibition act, was held to be void, as an unconstitutional extension of the police power of the municipality. The following cases also deny to a state or a municipal corporation the constitutional right to prohibit the keeping of intoxicating liquors by its citizens, regardless of any intention to dispose of them illegally. *Titsworth* v. *State*, 2 Okla. Cr. 268, 101 Pac. 288; *State* v. *Gilman*, 33 W. Va. 146, 10 S. E. 283; *Sullivan* v. *Oneida*, *supra*; *Ex parte Brown*, *supra*. *Contra*, *Delaney* v. *Plunkett*, 146 Ga. 547, 91 S. E. 561.

Judicial opinion, however, has been continually changing in the direction of an extension of the States' power in this respect. The general police power of the States has never been delegated to the Federal Government, and is not directly restrained by the Constitution. *Barbier* v. *Connally*, 113 U. S. 27. See *In re Rahrer*, 140 U. S. 545; and *United States* v. *Knight*, 156 U. S. 1. It has been held that a State may prohibit the mere possession of game in closed season. *Silz* v. *Hesterberg*, 211 U. S. 31; *Roth* v. *State*, 51 Ohio 209, 37 N. E. 259, 46 Am. St. Rep. 566. Intoxicating liquors are peculiarly the subject of the exercise of the police power. A state has absolute power to prohibit the manufacture, gift, purchase, sale or intrastate transportation of liquor. *Bartemeyer* v. *Iowa*, 18 Wall. 129; *Beer Co.* v. *Massachusetts*, 97 U. S. 25; *Mugler* v. *Kansas*, 123 U. S. 623; *Purity Extract and Tonic Co.* v. *Lynch*, 226 U. S. 192; *Clark Distilling Co.* v. *Western Maryland R. Co.*, 242 U. S. 311. See *Crane* v. *Campbell*, 245 U. S. 304. Since the State has this right, it must have the power to make it effective. When a State, in the exercise of its police power, seeks to suppress an evil, it may adopt such measures, having a reasonable relation to that end, as it may deem necessary in order to make its action effective, even though it may, thereby, render illegal transactions and pursuits which are innocent in